

## REMARKS

Reconsideration of the above-identified patent application in view of the amendment above and the remarks below is respectfully requested.

No claims have been canceled or added in this paper. Claims 1, 10, 11, 15 and 24-25 have been amended in this paper. Therefore, claims 1-6, 10-19 and 24-26 are pending and are under active consideration.

Claims 15-18 stand rejected under 35 U.S.C. 102(b) “as being clearly anticipated by Lantz (‘017)” and stand rejected under 35 U.S.C. 102(e) “as being clearly anticipated by Lantz (‘764).”

Applicant respectfully traverses the foregoing rejections. Claim 15, from which claims 16-18 depend, has been amended herein and now recites “[a]n insulated shipping container comprising:

(a) a foamed polymer body shaped to define a rectangular prismatic cavity bounded by four rectangular side walls and a bottom wall, said foamed polymer body having an open top end; and

(b) a flexible, un-foamed polymer bag integrally bonded to said foamed polymer body along said rectangular prismatic cavity, said open top end and said four rectangular side walls, said flexible, un-foamed polymer bag having a generally uniform width over its entire length.”

Claim 15 is neither anticipated by nor rendered obvious over Lantz (‘017) or Lantz (‘764) for at least the reason that neither Lantz (‘017) nor Lantz (‘764) teaches or suggest an insulated shipping container comprising, *inter alia*, a flexible, un-foamed polymer bag wherein said flexible, un-foamed polymer bag has a generally uniform width over its **entire** length. By contrast, each of Lantz (‘017) and Lantz (‘764) discloses a bag whose width changes dramatically over the course of its entire length, most particularly over its curved **transition** section (see, for example, transition

section 84 in Fig. 11a of Lantz ('017) or Lantz ('764)). The Patent Office has apparently acknowledged that the Lantz bags change substantially in width over the course of their entire lengths, noting in the outstanding Office Action that it is the width "of the upper portion of Lantz" that "is constant."

Claim 16 is further distinguishable over each of Lantz ('017) and Lantz ('764) for the reason that neither Lantz patent teaches or suggests sizing the bag to be approximately equal to the outer dimension of the foamed polymer bag. In fact, both Lantz patents clearly teach away from sizing the bag in such a manner as this would defeat the very objective of the Lantz patents, namely, the elimination of virtually all excess bag material so as to result in a foamed body of uniform thickness and substantially free of fissures.

Claim 17 is further distinguishable over each of Lantz ('017) and Lantz ('764) for the reason that neither Lantz patent teaches or suggests a unitary bag. Instead, the Lantz patents disclose bags made from a plurality of blanks that are joined together.

Accordingly, for at least the above reasons, the foregoing rejections should be withdrawn.

Claims 1-6, 10-14, 19 and 24-26 stand rejected under 35 U.S.C. 103(a) "as being unpatentable over Grogan in view of Lantz ('017) or Lantz ('764)." In support of the rejection, the Patent Office states the following:

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body. Either Lantz teaches integrally bonding a bag to a foamed polymer bag. The bag having a generally uniform width over its length. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention.

For claim 13, polyethylene and hexene bag materials would have been obvious by design choice.

For claim 14, it would have been obvious to replace the flaps on the inner box with a closure member which fits by plugging the open top end and being removably disposed within the open top end.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Applicant respectfully traverses the foregoing rejection.

Claim 1, from which claims 2-6, 10-14 and 26 depend, has been amended herein and now recites "[a]n insulated shipping container comprising:

(a) an outer box;

(b) an insulated insert, said insulated insert being slidably removably disposed within said outer box, said insulated insert comprising

(i) a foamed polymer body shaped to define a rectangular prismatic cavity bounded by four rectangular side walls and a bottom wall, said foamed polymer body having an open top end, and

(ii) a flexible, un-foamed polymer bag, said flexible, un-foamed polymer bag having an open end, a closed end and a generally uniform width over its length from said open end to said closed end and being integrally bonded to said foamed polymer body along said rectangular prismatic cavity, said open top end and said four rectangular side walls; and

(c) an inner box, said inner box being slidably removably disposed within said insulated insert."

As noted above, the Lantz patents fail to teach or to suggest a flexible un-foamed polymer bag having an open end, a closed end and a generally uniform width over its length from said open end to said closed end.

Grogan does not provide the teaching that is missing from the Lantz patents as Grogan does not even disclose a bag bonded to a rectangular prismatic cavity, let alone the claimed bag. Instead, Grogan discloses (see Fig. 4) an insulating member 40 that includes a bottom panel 41 and four side panels 43, each of panels 41 and 43 including a separate barrier film 47 surrounding an insulating core 48.

Therefore, the combination of Grogan with either Lantz patent fails to render obvious claim 1. Claim 10 is further distinguishable over the applied references for its recital that the bag is sized to be approximately equal to the outer dimension of the foamed polymer body. Claim 12 is even further distinguishable over the applied references for its recital that the bag is formed by sealing one end of a generally tubular member to itself with a transverse seam and forming a pair of longitudinal creases on opposite ends of said transverse seam.

Claim 19 depends from claim 15. Claim 15 is patentable over the Lantz patents for at least the reasons given above. Grogan, which does not even disclose a bag, let alone the claimed bag, fails to cure all of the deficiencies of the Lantz patents.

The insulated shipping container made according to the method recited in claim 24 is not taught or suggested by the applied combination of references. In particular, the references, taken individually or in combination, do not teach or suggest a container made by using a bag having a uniform width along its entire length, not to mention tearing said bag in the manner claimed and then securing the open part of the torn bag to the corrugated fiberboard box. The Patent Office has stated

a theory as to why it believes it may be obvious to secure the torn bag to the corrugated box, as recited in claim 24. However, the Patent Office has failed to substantiate its theory through teachings found in the prior art. None of the references teach the motivation relied upon by the Patent Office. Moreover, the Patent Office has failed to explain why it would have been obvious to tear the plastic bag in the first place.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 19 and 25 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Lantz ('017) or Lantz ('764) in view of Grogan.” In support of the rejection, the Patent Office states the following:

Either Lantz discloses the invention except for inner box. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container.

Applicant respectfully traverses the foregoing rejection. Claim 19 depends from claim 15. Claim 15 is patentable over the Lantz patents for at least the reasons discussed above. Grogan fails to cure all of the deficiencies of the Lantz patents. Accordingly, claim 19 is patentable over the applied combination of references.

Claim 25, which is a product-by-process claim, is patentable over the applied combination of references since the references do not teach or suggest a container made by using an elongated plastic bag having an open end, a closed end and a generally uniform width over its length from said open end to said closed end, said generally uniform width being sized to be approximately equal to the outer dimension of said enclosure surrounding said plug member.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claims 24 and 25 stand rejected under 35 U.S.C. 103(a) “as being unpatentable over Grogan in view of Lantz (‘017) or Lantz (‘764) and Langen.” In support of the rejection, the Patent Office states the following:

This rejection is made should it be deemed that the Lantz references do not sufficiently teach the uniform width of the bag.

Grogan discloses the invention except for the bag integrally bonded to the foamed polymer body and the uniform width of the bag. Either Lantz teaches integrally bonding a bag to a foamed polymer body. It would have been obvious to add the integrally bonded bag to the foamed body in order to make the foamed polymer insulation easily separable from the boxes of the invention. Langen teaches a bag having uniform width as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.

For claim 24, it would have been obvious to secure a torn elongated plastic bag to the corrugated fiberboard box in order to prevent the bag from being separated from the box so that the box will always protect the bag from further puncture and the box will always have the polymer foam insulation attached to keep the box thermally insulated. Note that the outer box still remains separable.

Applicant respectfully traverses the foregoing rejection. As best understood by Applicant, the Patent Office is apparently contending that it would have been obvious to one of ordinary skill in the art at the time of the invention to replace the Lantz bag with the Langen bag and then to bond the Langen bag to the Grogan foamed polymer body. Applicant respectfully disagrees for at least the reasons below.

First of all, there would have been absolutely no reason for one of ordinary skill in the art to substitute the Langen bag for the Lantz bag. The Langen bag is not taught to be useful for even a remotely related purpose to the Lantz bag, and nothing in Langen would have suggested its

desirability for the purpose of the Lantz bag. Indeed, in view of the fact that Lantz stresses the desirability of eliminating folds and fissures caused by surrounding a foamed body with a plastic sheet and teaches that its tapered bag is a significant advance in achieving this objective, it is clear that there would have been a strong teaching away from substituting the Lantz bag with the Langen bag as such a modification would have been *expected* to have precisely the result Lantz was seeking to avoid.

With respect to the Patent Office's comments regarding claim 24, Applicant submits that the Patent Office has provided no more than a theory as to why it may be obvious to secure the torn bag to the corrugated box. The Patent Office has failed to substantiate its theory through teachings found in the prior art. None of the references teach the motivation relied upon by the Patent Office. Moreover, the Patent Office has failed to explain why it would have been obvious to tear the plastic bag in the first place.

Accordingly, for at least the above reasons, the foregoing rejection should be withdrawn.

Claim 25 stands rejected under 35 U.S.C. 103(a) "as being unpatentable over Lantz ('017) or Lantz ('764) in view of Grogan and Langen." In support of the rejection, the Patent Office states the following:

This rejection is made should it be deemed that the Lantz references do not sufficiently disclose the uniform width of the bag.

Either Lantz discloses the invention except for the inner box and the uniform width of the bag. Grogan teaches an inner box. It would have been obvious to add an inner box to protect the inside of the bag from being punctured by the contents placed within the shipping container. Langen teaches a bag having uniform width as the edge of the seam extends at the same width over the entire length of the bag as shown in Fig. 15a. It would have been obvious to modify the width to be uniform to save the cost of trimming the seam.


Applicant respectfully traverses the foregoing rejection for at least the same reasons given in the preceding rejection. Accordingly, the foregoing rejection should be withdrawn.

In conclusion, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action is earnestly solicited.

If there are any fees due in connection with the filing of this paper that are not accounted for, the Examiner is authorized to charge the fees to our Deposit Account No. 11-1755. If a fee is required for an extension of time under 37 C.F.R. 1.136 that is not accounted for already, such an extension of time is requested and the fee should also be charged to our Deposit Account.

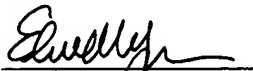
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 4, 2003

  
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